

June 14, 2004

Vincent Brown
Executive Director
Metro Miami Action Plan Trust
19 West Flagler Street
Mezzanine-Room 106
Miami, Florida 33130

RE: REQUEST FOR ADVISORY OPINION 04-102

Dear Mr. Brown:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the sale of real property. You are seeking guidance as to whether a buyer may use financing from MMAP to purchase a home from you.

In your letter, you advised the Commission that MMAP administers a Homeowners Assistance Program. The MMAP Homeowners Assistance Program provides closing costs and down payment assistance to low and moderate income home buyers. The Miami-Dade Housing Agency operates a similar program.

You are currently selling a home to a prospective buyer who is seeking to use the homeowners assistance program for partial financing. You have not assisted the homebuyer in obtaining financing for the home.

As President and CEO of MMAP, you do not personally execute the loan documents or participate in the loan approval process. However, you do supervise the MMAP staff that administers the program.

The Commission found the Conflict of Interest and Code of Ethics ordinance permits you to sell a home to a purchaser who uses MMAP financing as long as the purchase is an arms-length transaction and you do not use your official position to help the homeowner obtain financing. However, in order to avoid any appearance of a conflict, the homebuyer should use the Miami-Dade Housing Agency to provide the down payment and closing cost assistance.

Section 2-11.1(u) provides that department directors are prohibited from entering into contract with persons who are contracting with the county unless it is an arms-length business transaction. Section 2-11.1(u) provides that " no person who is serving as an elected County official or a member of the staff of an elected County official or as County Manager, senior assistant to the County Manager or department director shall enter into a business transaction with the any person or entity that has a contract with Miami-Dade County or any shareholder, partner, officer, director or employee of said contractor unless said business transaction is an arms-length transaction made in the ordinary course of business.

The transaction between you and the homebuyer appears to be an arms-length transaction. Therefore, the arrangement does not violate Section 2-11.1(u). Moreover, the use of MMAP funds does not violate Section 2-11.1(g)(misuse of official position) as long as Brown does not use his position to help the homebuyer obtain financing or to expedite the process.

Notwithstanding the lack of a legal conflict, the arrangement still raises the appearance of a conflict of interest. In order to avoid any appearance of a conflict, the homebuyer should use the MDHA program and MDHA should handle all approvals, monitoring and servicing for the loan. MMAP may reimburse MDHA for loan costs and administrative support.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS
Executive Director